



C.M.A.No.225 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.225 of 2011
and
Miscellaneous Petition No.1 of 2011

The New India Assurance Co., Ltd.,
Bye-Pass Road, Dharmapuri Town,
Dharmapuri Taluk and District.
Respondent

... Appellant / 2nd

Vs.

1. Chinnavan @ Chinnasamy ... Respondent / Petitioner
2. Kannan ... Respondent/Respondent
[R2 set ex-parte before Tribunal.
Hence notice to R2 dispense with]

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 18.08.2010 made in M.C.O.P.No.85 of 2007 on the file of the Motor Accidents Claims Tribunal, Additional District Court cum Fast Track Court, Dharmapuri.

For Appellant	:	Mr. M. J. Vijayaraghavan
For R1	:	No appearance
For R2	:	Dispensed with



C.M.A.No.225 of 2011

WEB COPY

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Second respondent-Insurance Company, challenging the Award passed in M.C.O.P.No.85 of 2007, dated 18.08.2010 on the file of the Motor Accidents Claims Tribunal, Additional District cum Fast Track Court, Dharmapuri.

2. The parties are referred to hereunder according to status and ranking before the Tribunal.

3. It is admitted case of the claimant that on 23.02.2006 at about 10.00 a.m., he was involved in agricultural work by using the Tractor bearing Registration No.TN 29 H 0321 at Sappanipatti Village, and after work is completed, he travelled in the Tractor towards Elumitchanahalli Village. He was sitting next to the driver of the Tractor, while they reached near Gettur Thirudarpallam, at about 10.00 a.m., the driver of the Tractor drove the same in a rash and negligent manner and since sudden brake was applied, the claimant fell down, which resulted in causing severe injuries to



the claimant. He undergone in-patient treatment at various places and after discharged from the hospital, he has filed the claim petition seeking compensation for a sum of Rs.5,00,000/-.

4. The first respondent who is the owner of the Tractor has not appeared and contested the claim and was remained ex-parte. The second respondent filed counter and contended that the Tractor was not insured with the respondent-Insurance Company, the Driver of the Tractor was also not having valid driving licence and they have also disputed the claim made under various heads. Hence prays to dismiss the claim petition.

5. Before the Tribunal, on the side of the claimant, P.W.1 and P.W.2 were examined and Exs.P1 and P8 were marked. On the side of the respondent, R.W.1 was examined and Exs.R1 and R2 were marked.

6. Based on the evidence placed on record, the Tribunal in point No.1 has held that the driver of the Tractor is responsible for the accident. In point No.2, the Tribunal has held that the claimant is entitled to claim compensation and awarded a sum of Rs.1,05,374/- as compensation with



7.5% per annum from the date of filing of claim petition till the date of realisation.

7. Aggrieved over the Award granted by the Tribunal, the Insurance Company has come forward with this appeal.

8. Admittedly, in this case, the claimant had travelled in the Tractor which has seating capacity for driver alone and it is the evidence of P.W.1-claimant that after completion of the agricultural work, the claimant was permitted to be seated on the bannet to travel in the Tractor. The claimant herein travelled in the Tractor as a gratuitous passenger and as per the Judgment of the Apex Court in the case of *New India Assurance Co.Ltd., Vs. Asha Rani and Ors. [MANU/SC/0474/2001] [2001 (6) SCC 724]* and in the case of *National Insurance Co.Ltd. Vs. Baljit Kaur [2004 (1) CTC 210 : 2004 (2) SCC 1 : 2004(2) SCC 1 : AIR 2004 SC 1340]* and the Judgment of this Court in *Bharti Axa General Insurance Company Limited vs. Aandi and Others* reported in *2018 (2) TN MAC 731 (DB)* gratuitous passenger travelled in goods vehicle is not eligible for compensation from the Insurance Company.



WEB COPY

9. Recently, the Full Bench of **Karnataka High Court** in 2021 **SCC Online Karnataka 12137 [Gandhilingappa @ Gandhilinga and Another vs. K.Guleppa and Others]** in paragraph No.21 by following the judgment of the Hon'ble Apex Court passed in **2004 (8) SCC 697 National Insurance Company Ltd., vs Chinnama and others** held that the person travelled in the Tractor Trailer would not fall within the category of persons travelled along with the goods and they could not be termed as third parties.

15. In paragraph No.21 which reads as under:

“21. In fact, the issue whether a tractor is a goods carriage arose for consideration before a Bench of three Hon'ble Judges of the Apex Court in the case of V.Chinnamma, (supra). In paragraph 15 and 16, the Apex Court has dealt with the issue. In categorical terms, it has been held that a tractor by itself is not a goods carriage. However, in paragraph 16, the Apex Court observed that a tractor fitted with a trailer may or may not answer the definition of goods carriage contained in Section 2(14) of the M.V.Act. The observations made by the Apex Court in paragraphs 15 and 16 are relevant which read thus:

“15. Furthermore, a tractor is not even a goods carriage. The expression “goods carriage' has been defined in Section 2(14) to mean



WEB COPY



C.M.A.No.225 of 2011

“any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods”
whereas, “tractor” has been defined in Section 2(44) to mean.

“a motor vehicle which is not itself constructed to carry and load (other than equipment used for the purpose of propulsion); but excludes a roadroller”. “Trailer” has been defined in Section 2(46) to mean

“any vehicle, other than a semi-trailer and a sidecar, drawn or intended to be drawn by a motor vehicle”.

16. A tractor fitted with a trailer may or may not answer the definition of goods carriage contained in Section 2(14) of the Motor Vehicles Act. The tractor was meant to be used for agricultural purposes. The trailer attached to the tractor, thus, necessarily is required to be used for agricultural purposes, unless registered otherwise. It may be, as has been contended by Mrs.K.Sharda Devi, that carriage of vegetables being agricultural produce would lead to an inference that the tractor was being used for agricultural purposes but the same by itself would not be construed to mean that the tractor and trailer can be used for carriage of goods by another person for his business activities. The deceased was a businessman. He used to deal in vegetables. After he purchased the vegetables, he was to transport the same to the market for the purpose of sale thereof and not for any agricultural purpose. The tractor and trailer, therefore, were not being used for agricultural purposes. However, even if it be assumed that the trailer would answer the description of “goods carriage” as contained in Section 2(14) of the Motor



Vehicles Act, the case would be covered by the decisions of this Court in Asha Rani and other decisions following the same, as the accident had taken place on 24.11.1991 i.e., much prior to coming into force of the 1994 amendment.”

10. The Judgment of the Full Bench of **Karnataka High Court** cited above, is squarely apply to this Court, since the claimant had travelled in the Tractor which is not having any permissible seating capacity, he is not entitled to claim compensation from the Insurance Company. As per the policy condition, transporting any person in the Tractor is not permissible. Hence, the claimant shall be termed only as a gratuitous passenger and the Insurance Company is not liable to indemnify the owner of the vehicle as held by the Hon'ble Apex Court in **Asha Rani and Baljit Kaur** cases cited above.

11. This Court is of the view that the Tribunal has failed to consider this statutory violation as well as the policy conditions. Hence, the finding of the Tribunal, that the Insurance Company has to indemnify the owner of the vehicle and to pay the compensation to the claimant is hereby set aside and the second respondent herein/owner of vehicle is directed to



C.M.A.No.225 of 2011

pay the compensation assessed by the Tribunal to the claimant.

WEB COPY

12. In the result, this Civil Miscellaneous Appeal is allowed.

The second respondent herein /owner of vehicle is directed to pay the compensation awarded by the Tribunal for a sum of Rs.1,05,374/- to the claimant/first respondent and the appellant/Insurance Company is permitted to withdraw the amount, if any, already deposited lying in the credit of M.C.O.P.No.85 of 2007, by making proper application. In other aspects the award of the Tribunal shall stand confirmed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

14.09.2023

ssi
Index:Yes/No
Speaking Order:Yes/No
Neutral Citation Case: Yes/No

To:

8/10



C.M.A.No.225 of 2011

WEB COPY

1. The Additional District cum Fast Track Judge,
Motor Accidents Claims Tribunal,
Chennai.
2. The Section Officer,
V.R.Section,
High Court,
Chennai.

K.RAJASEKAR,J.



WEB COPY



C.M.A.No.225 of 2011

ssi

C.M.A.No.225 of 2011

14.09.2023